

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Arkansas 49, INC.	)	
KYPX(TV), Camden, AR	)	
	)	CSR 6234-M
v.	)	
	)	
EchoStar Communications Corporation	)	
	)	
Request for Mandatory Carriage of	)	
Television Station KYPX(TV), Camden, AR	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 18, 2003**

**Released: December 22, 2003**

By the Deputy Chief, Media Bureau:

**I. INTRODUCTION**

1. Arkansas 49, Inc. (“Arkansas 49”) licensee of commercial television station KYPX(TV), Camden, Arkansas (KYPX) filed the above-captioned must carry complaint against EchoStar Communications Corporation (EchoStar), pursuant to Section 338 of the Communications Act of 1934, as amended (the “Act”), and Section 76.66 of the Commission’s rules for its refusal to carry the signal of KYPX on its satellite system.<sup>1</sup> Arkansas 49 states that EchoStar is providing “local-into-local” satellite service pursuant to the statutory copyright license in the Little Rock-Pine Bluff, Arkansas DMA.<sup>2</sup> In its complaint, Arkansas 49 alleges that EchoStar has failed to meet its must carry obligations under the Commission’s satellite broadcast signal carriage rules.<sup>3</sup> EchoStar filed an opposition to the complaint and Arkansas 49 filed a reply. For the reasons discussed below, we deny the complaint.

<sup>1</sup> 47 U.S.C. §338; 47 C.F.R. § 76.66; *See* Public Notice, Special Relief and Show Cause Petitions, Report No. 0086, dated September 5, 2003.

<sup>2</sup> *See* 17 U.S.C. § 122(a); 47 U.S.C. § 339. A satellite carrier provides “local-into-local” satellite service when it retransmits a local television signal back into the local market of that television station for reception by subscribers. 47 C.F.R. § 76.66(a)(6).

<sup>3</sup> Under Section 76.66(m)(3) of the Commission’s rules, a local television broadcast station that disputes a response by a satellite carrier that it is in compliance with its must carry obligations may obtain review of such denial or response by filing a “complaint” with the Commission in accordance with Section 76.7. 47 C.F.R. § 76.66(m)(3). Although styled a “complaint,” a carriage complaint filed against a satellite carrier is treated by the Commission as a petition for special relief for purposes of the Commission’s pleading requirements. *See 1998 Biennial Regulatory Review: Part 76 – Cable Television Service Pleading and Complaint Rules*, 14 FCC Rcd 418 (1999).

## II. LEGAL BACKGROUND

2. Section 338 of the Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 (SHVIA),<sup>4</sup> required satellite carriers, beginning January 1, 2002, to carry on request all local television broadcast stations' signals in local markets in which the satellite carrier carries at least one local television broadcast signal pursuant to the statutory copyright license.<sup>5</sup> A station's market for satellite carriage purposes is its DMA, as defined by Nielsen Media Research.<sup>6</sup> In November 2000, the Commission adopted rules to implement the provisions contained in Section 338.<sup>7</sup>

3. Under the Commission's broadcast signal carriage rules, each satellite carrier providing local-into-local service pursuant to the statutory copyright license is generally obligated to carry any qualified local television station in the particular DMA that made a timely election for mandatory carriage, unless the station's programming is duplicative of the programming of another station carried by the carrier in the DMA.<sup>8</sup> Under the SHVIA, a television station asserting its right to carriage is required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.<sup>9</sup> To be considered a good quality signal for satellite carriage purposes, a television station must deliver to the local receive facility ("LRF") of a satellite carrier either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment.<sup>10</sup>

## III. DISCUSSION

4. In this case, EchoStar announced its intention to begin local-into-local service in the Little Rock, Arkansas DMA in the spring of 2003 and Arkansas 49, on behalf of station KYPX, made a timely request for mandatory carriage.<sup>11</sup> EchoStar agreed to carry the station if KYPX provided a good quality signal to EchoStar's local receive facility (LRF) in Little Rock.<sup>12</sup> Subsequent tests, however, indicated

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<sup>4</sup> See Pub. L. No. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (Nov. 29, 1999).

<sup>5</sup> See 47 U.S.C. § 338.

<sup>6</sup> A DMA is a geographic area that describes each television market exclusive of others, based on measured viewing patterns. See 17 U.S.C. § 122(j)(2)(A)-(C); see also *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, 16 FCC Rcd 1918, 1934 (2000) ("DBS Broadcast Carriage Report & Order"); 47 C.F.R. § 76.66(e) ("A local market in the case of both commercial and noncommercial television broadcast stations, is the designated market area in which a station is located, and [i]n the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area within the same local market; and (ii) [i]n the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.").

<sup>7</sup> See generally *DBS Broadcast Carriage Report & Order*, 16 FCC Rcd at 1918. The Commission later affirmed and clarified its carriage rules. See *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, 16 FCC Rcd 16544 (2001) ("DBS Broadcast Carriage Reconsideration Order").

<sup>8</sup> See 47 C.F.R. § 76.66.

<sup>9</sup> 47 C.F.R. § 76.66(g)(1). See *DBS Must Carry Report & Order*, 16 FCC Rcd at 1938-45. See also *DBS Must Carry Reconsideration Order*, 16 FCC Rcd 16568-70 (affirming previous holding that selection of an alternative receive facility is based on the vote of the majority of the stations entitled to carriage in each affected market, not just the stations actually electing mandatory carriage).

<sup>10</sup> 47 C.F.R. § 76.66(g)(2). See *DBS Must Carry Reconsideration Order*, 16 FCC Rcd at 16559-61.

<sup>11</sup> Complaint at Exhibits I & II.

<sup>12</sup> *Id.* at Exhibit III.

that the station did not provide an adequate over the air signal to the LRF and the parties discussed alternative methods of delivery.<sup>13</sup> The station requested that it be permitted to deliver its signal by satellite and agreed to purchase the requisite equipment to do so. EchoStar agreed to satellite delivery of the station's signal but insisted that the station would have to lease its own space at the LRF to install the satellite receiving equipment.<sup>14</sup> EchoStar indicated that it leases space for its LRF from Clear Channel and that it would have to renegotiate that lease to accommodate a satellite antenna. EchoStar asserts that it is not obligated under our rules to take this extraordinary action.<sup>15</sup> Arkansas 49 refused to secure space for the satellite antenna and filed the instant complaint.

5. The issue presented here involves the allocation of responsibilities between a satellite operator and a broadcast station to assure delivery of a good quality signal at a satellite operator's LRF. Arkansas 49 argues that if it agrees to purchase the necessary receiving equipment, the satellite carrier must provide space at the LRF to install such equipment.<sup>16</sup> It relies on the Media Bureau's decision in *Norwell Television, LLC v. DIRECTV, Inc.*<sup>17</sup> In that case, the Bureau determined that DIRECTV was responsible for providing installation space for specialized equipment necessary to ensure reception of a good quality signal from a station exercising must carry rights. In making its decision the Bureau stated that DIRECTV had not offered any specific information as to why the station's specialized equipment could not be accommodated on DIRECTV's existing structure without imposing costs additional to those that would be incurred for standard reception equipment. The Bureau noted that the specialized equipment weighed less than two pounds.<sup>18</sup> The Bureau also stated that "DIRECTV cannot decline to attach specialized equipment to its LRF in the absence of evidence that the existing LRF equipment cannot accommodate the specialized equipment for structural or technical reasons."<sup>19</sup>

6. EchoStar argues that *Norwell* is not controlling in this case. It states that it does not receive any stations by satellite in any of the 70 markets in which it offers local into local service. It states that it has the ability to receive KYPX off air or by fiber but does not have the ability to allow Arkansas 49 to install a satellite receiving antenna on the property that EchoStar leases from Clear Channel for its LRF.<sup>20</sup> EchoStar estimates that the dish antenna necessary to receive the satellite feed would have to be 1.2 to 1.8 meters in diameter (approximately 4 to 6 feet). According to EchoStar, such an antenna would require sufficient support structure to accommodate weight and wind load and would have to be positioned to get a clean line of sight to the satellite.<sup>21</sup> EchoStar asserts that the situation in this case is very different from *Norwell* where the necessary equipment weighed only two pounds.<sup>22</sup>

7. Given the particular set of circumstances presented by this case, we find that EchoStar is not obligated to provide installation space for specialized equipment unique to only one broadcast station

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<sup>13</sup> *Id.* at Exhibits IV & V.

<sup>14</sup> *Id.* at Exhibit VI.

<sup>15</sup> Opposition at 2.

<sup>16</sup> Complaint at 5.

<sup>17</sup> 17 FCC Rcd 10573 (MB 2002)(*Norwell*).

<sup>18</sup> *Norwell* at 10580.

<sup>19</sup> *Id.*

<sup>20</sup> See Opposition at 4 for EchoStar's description of provisions of the Clear Channel lease.

<sup>21</sup> Arkansas 49 does not dispute this description.

<sup>22</sup> EchoStar also cites *Suburban Cable /TV Co., Inc. (WMFZ-TV)*, 16 FCC Rcd. 10790 (CSB 2001) for the proposition that cable operators are responsible for securing tower installation rights for equipment comparable to that used for reception of other signals. EchoStar argues that the satellite reception equipment in this case is not comparable to equipment used by any other station,

where that equipment cannot be physically accommodated at the operator's existing LRF. EchoStar has offered undisputed information that the satellite equipment Arkansas 49 seeks to install is large and weighs significantly more than the equipment involved in *Norwell*. This antenna does not fall within the definition of comparable equipment envisioned in *Suburban Cable* and in fact is not required for LRF reception by any other station in any other market that EchoStar serves. EchoStar asserts that its lease with Clear Channel does not cover installation of a 4 to 6 foot satellite antenna and Arkansas 49 has offered no evidence to the contrary. Although satellite carriers, like cable operators, are generally responsible for property negotiations necessary to operate an LRF,<sup>23</sup> our rules do not require renegotiation of the lease under the particular circumstances presented here.

8. We disagree with Arkansas 49's interpretation of our ruling in *Rancho Palos Verdes*.<sup>24</sup> In that case the Bureau held that satellite was an acceptable method of delivery of broadcast stations to cable headends for mandatory carriage purposes. The case did not involve the issue of which party is responsible for the cost of accommodating the installation of satellite receiving equipment. In this case, the question of whether or not satellite delivery to a satellite operator's LRF is an acceptable method of delivery is not at issue here because EchoStar has indicated that it will accept satellite delivery of KYPX. The issue here is whether the unique specialized equipment required by this station will require physical accommodation beyond that which would be expected to be available at a satellite carrier's LRF. KYPX-TV is entitled to carriage on EchoStar's system when it is able to provide a good quality signal at EchoStar's LRF but the station is responsible for costs associated with the specialized equipment necessary to accomplish delivery including extraordinary installation costs.

9. EchoStar raises an additional issue about whether the signal Arkansas 49 plans to deliver is actually the full KYPX signal or some national feed without all local material.<sup>25</sup> In reply, Arkansas 49 states that the signal delivered to EchoStar will be the full station signal<sup>26</sup> and thus this issue is moot.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and section 76.66(d)(2)(ii) of the Commission's rules, 47 C.F.R. § 76.66(d)(2)(ii), that the Must Carry complaint filed by Arkansas 49, licensee of commercial television station KYPX-TV, Camden, Arkansas against EchoStar is denied.

11. This action is taken by the Deputy Chief, Media Bureau, pursuant to authority delegated by section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Media Bureau

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<sup>23</sup> *Implementation of the Satellite Home Viewer Act of 1999; Broadcast Signal Carriage Issues*, 16 FCC Rcd 16544, 16580 (2001).

<sup>24</sup> *Rancho Palos Verdes Broadcasters, Inc. v. Lone Pine Television, Inc.*, 18 FCC Rcd. 7068 (MB, 2003).

<sup>25</sup> Opposition at 5.

<sup>26</sup> Reply at 7.